IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

OP.No. 21187 of 1999(V)

PETITIONER:

MARY LONAPPAN, VI/45,
CHAKKANATTU HOUSE,
MARADU P.O.,
KANAYANNUR TALUK.

BY ADV. SRI.ABRAHAM VAKKANAL

RESPONDENTS:

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1) THE DISTRICT COLLECTOR,
CIVIL LINES, KAKKANADU, ERNAKULAM.

2) THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI.

3) THE TAHSILDAR, KANAYANNUR,
ERNAKULAM.

4) THE VILLAGE OFFICER,
MARADU, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.TEK CHAND V.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:-

Ext.P1: **Copy of tax receipt of evidencing payment of tax for the building during 68-89.**

Ext.P2: **Copy of plan alteration and additional work to the existing building Sy.No.589/12 Ward No.6/89 of Smt.Mary Lonappan at Maradu Panchayat.**

Ext.P3: **Copy of certificate dtd.24.2.1998 from the Bank of India, Maradu.**

Ext.P4: **Copy of certificate dtd.23.1.1998 from the Secretary, Maradu Grama Panchayat.**

Ext.P5: **Copy of tax receipts evidencing payment of tax in respect of the building VI/37, 38 & 39 and with new No.VI/43, 44 and 45 during 92-93 & 96-97.**

Ext.P6: **Copy of Assessment order dtd.26.11.1997 issued from the 3rd respondent.**

Ext.P7: **Copy of proceedings No.K.Dis.1177/98/G dated 8.1.99 of the 2nd respondent.**

Ext.P8: **Copy of Revision Petition dtd.16.2.1999 filed by the petitioner before the 1st respondent.**

Ext.P9: **Copy of chalan receipt dtd.16.2.1999 for Rs.5855/-.**

Ext.P9(a): **Copy of Tax Receipt dtd.27.1.1998 evidencing payment of first instalment.**

Ext.P10: **Copy of order dtd.28.7.1999 of the 1st respondent.**

RESPONDENTS' EXHIBITS:- **NIL.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 21187 of 1999-V.

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Dated this the 7th day of September, 2007.

J U D G M E N T

The petitioner is aggrieved by the orders of assessment, appeal and revision whereby the authorities have finalised the assessment of the building in question. The contention raised is that there were two rooms which covers plinth area of 147.30 Sq.metres which was being used as an out house. Subsequently repairs were effected for convenient enjoyment. Ext.P2 is the plan produced by the petitioner to support the said case. It is stated that the building was renumbered as VI/43, VI/44 and VI/45 and the new number of the renovated house is VI/45. Ext.P4 is the certificate showing the same.

2. It appears that the Tahsildar had issued notice to the petitioner proposing assessment of building tax and according to the petitioner she had asked for time for furnishing materials before the Tahsildar. Ext.P6 is the assessment order passed thereafter. That was challenged in appeal but it was dismissed by Ext.P7. Thereafter, a revision petition was filed before the District Collector which was also dismissed.

3. The learned counsel for the petitioner submitted that the orders passed by the authorities suffer from a material defect in that the assessment is made considering it as a new building. It is pointed out that the plinth area

which is now calculated is without excluding the plinth area occupied by the old house and the tax is assessed for 319 Sq.metres without excluding 147.30 Sq.metres. Reliance was placed on Section 5(3) of the Act whereby the tax is payable on the additional plinth area of the building which was subjected to the repair or the improvement as the case may be.

4. The petitioner is well founded in the submission made above going by Section 5(3) of the Act. Exts.P6 and P7 will show that it is mainly because of the fact that no evidence was produced, the authorities concluded that the assessment should be finalised for the total plinth area of 390 Sq.metre of the building. It is pointed out that the petitioner could not produce sufficient evidence as time sought for by the petitioner was not granted by the Tahsildar. It is submitted by the learned counsel that he will be able to establish before the revisional authority itself by cogent evidence that the petitioner is entitled to the benefit of Sec.5(3) of the Act.

5. Therefore Ext.P10 is quashed. The District Collector will rehear the revision petition with notice to the petitioner and take a fresh decision after a detailed consideration of the materials made available by the petitioner in the light of Sec.5(3) of the Act. The same shall be done within a period of four months from the date of receipt of a copy of this judgment. Any payment made during the pendency of the proceedings will have to be adjusted towards the liability that is assessed finally. It is for the petitioner to

produce evidence in support of her case relating to the plinth area of the old building. Till orders are passed and communicated to the petitioner, the interim stay granted by this Court in CMP.No.35036/1999 will continue to be in force.

The Original Petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-